April 23, 2008

Commissioner Basham
Office of International Trade
Trade and Commercial Regulations Branch Customs and Border Protection
1300 Pennsylvania Avenue, NW (Mint Annex)
Washington, DC 20229

Re: Comments of the American Apparel & Footwear Association – Customs and Border Protection's Proposed Interpretation of the Expression "Sold for Exportation to the United States"; 73 Federal Register 4,261 (January 24, 2008); Docket No. USCBP 2007-0083

Dear Commissioner Basham:

On behalf of the American Apparel & Footwear Association (AAFA), I am writing to express very **strong opposition** to Customs and Border Protection's (CBP) proposal to eliminate the First Sale (FS) doctrine.

By way of background, AAFA is the national trade association representing the apparel and footwear industries, and their suppliers. Our members make, manufacture, and sell garments, shoes, and accessories – and their inputs – throughout the United States and around the world.

On January 24, CBP published a Federal Register notice proposing to reinterpret the term "sale for export" so as to eliminate the so-called First Sale doctrine. Among other things, the FS doctrine provides a way for companies to limit the amount of duties they pay in the United States (and in other countries) by lowering the appraised value of imported goods. The application of the FS doctrine in the United States – which is based on U.S. statute and has been defined through a series of court rulings – has been successfully implemented and enforced by CBP for the past two decades.

CBP's proposal to eliminate the First Sale doctrine is unacceptable and must be immediately withdrawn. We further urge CBP to publish a Federal Register notice reaffirming the existing interpretation for the term "sale for export."

AAFA members have rarely expressed such a strong and negative unified reaction as they did when they advised us of their opposition to the CBP's proposal. AAFA members cited a range of concerns and problems that largely break down along **four** areas.

1. CBP does not have the legal authority to propose such a reinterpretation.

2. CBP failed to consult with key stakeholders in the Administration, the Congress, or the business community in proposing this reinterpretation. This process failure undermines a key partnership that is a cornerstone of U.S. cargo security efforts and erodes business confidence in the transparent operation of the U.S. government.

3. CBP has no compelling reason to seek a change to a program that has worked very well for more than 20 years.

4. CBP's proposal is wrong in that it raises costs of imported goods to businesses, which will likely result in increased prices for consumers. Bad policy at any time, such a policy is particularly ill-conceived during the current economic downtown.

Our comments will examine each area in further detail.

1. CBP does not have the legal authority to propose such a reinterpretation.

The FS Doctrine is well-settled law that cannot be changed in the manner proposed by CBP. Based on U.S. statute, the FS doctrine is grounded in clear and unambiguous judicial decisions, including decisions at the appellate level,[1] dating back to the late 1980's. In those decisions, the federal courts have established clear guidelines on how the FS doctrine is to be implemented and enforced.[2] These decisions preclude CBP from proposing a reinterpretation of the FS doctrine and, in fact, bind CBP to follow the existing interpretation.

During the past two decades, numerous companies have relied upon the fact that federal courts have issued consistent decisions in support of the FS doctrine to confirm that this program is available for their use. In accordance with these judicial precedents CBP has issued numerous rulings and implementation documents as well. Any CBP reinterpretation of this aspect of U.S. law – in effect overruling the federal courts – would create enormous havoc by, among other things, calling into question CBP's adherence to the rule of law. The questions raised are already creating dire and significant unpredictability, both with respect to this issue and other elements of U.S. trade law. For example, would the trade community be able to pursue future legal challenges to this FS reinterpretation in U.S. courts as it would be unclear that CBP would respect any future binding decisions by those courts on this issue? Moreover, what other well-settled legal precedents would CBP be allowed to overrule at its whim? The fact that the CBP action on the FS doctrine is even causing the trade community to raise these questions should be a huge cause for alarm.

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[1] *E.C. McAfee Co. v. United States*, 842 F.2d 314 (Fed. Cir. 1988); *Nissho Iwai American Corp. v. United States.*, 982 F.2d 505 (Fed. Cir. 1992); *Synergy Sport International Ltd. v. United States*, 17 CIT 18 (1993).
[2] Courts have established three criteria: (1) the goods be sold (transfer of title for consideration); (2) the goods be destined for the US at time they are sold; and (3) the sale be at arm's length.

Equally troubling is that, in proposing this change, CBP has cited a recent non-binding commentary by the World Customs Organization (WCO) Technical Committee on Customs Valuation[3] as a prime motivator for this change. CBP has pointed to this decision as a rationale that permits the CBP to void 20 years of judicial and administrative precedent and circumvent Congress. Yet, the WCO commentary does not represent a formal position of the WCO nor does it reflect a change in the text of the Uruguay Round Trade Agreement multinational Value Code or recognize that this Value Code does not require uniformity in applying non-binding position papers. Thus, the United States is under no obligation to implement this commentary.

Moreover, only Congress is able to change U.S. law to overturn judicial interpretation of binding statutory language to eliminate FS. It is clear that there is little support for Customs' proposal in Congress. Numerous lawmakers[4] have complained in recent weeks that they oppose efforts by CBP – (on both process and policy grounds) to reinterpret the term "sale for export" or otherwise revoke the FS doctrine.

Finally, we note that CBP does not cite specific statutory authority in the FR notice to support the proposed reinterpretation. Although CBP proposes to limit the application of the aforementioned cases to the specific entries at issue in those cases – apparently referring to the authority CBP has to "limit"[5] the application of federal court rulings – it has not cited this authority in the FR notice. Limiting those cases in this fashion would create numerous legal problems that run contrary to clear principles that govern the ability of CBP to use this authority[6]. First, CBP is proposing to limit cases that are decades old – well after the time for CBP to make a timely assertion of its limiting authority. Second, limitation of these cases would have the effect of abrogating (not limiting) the underlying FS doctrine, yet CBP does not have the authority (as noted above) to abrogate court decisions. Third, in deciding those cases, the courts intended for their decision to have broad application because they established criteria to be applied in other situations. In fact, in Nissho Iwai American Corp. v. United States , 982 F.2d 505 (Fed. Cir. 1992), the Court of Appeals for the Federal Circuit explicitly rejected CBP's "limiting" authority on the FS doctrine when it uphold its interpretation in the earlier *McAfee* decision, which CBP had sought to limit.

If CBP is unhappy with the FS doctrine, it can appeal this policy in a proper legal challenge to a higher court or ask Congress to change U.S. law. In this instance, CBP has done neither. CBP should not pursue this improper and irregular course.

2. CBP failed to consult with key stakeholders

CBP failed to consult with key stakeholders in developing and publishing this proposal. We view this as a serious process flaw with numerous troubling ramifications.

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[3] See Commentary 22.1 of the Technical Committee on Customs Valuation, 24th Session of the World Customs Organization. April 2007.
[4] See attachments from Members of Congress objecting to the CBP proposal on First Sale.
[5] See 19 U.S.C. § 1625 (d)
[6] See *Boltex Manufacturing Co., v. United States*, 140 F. Supp. 2d 1339, 1350 (CIT 2000).

Although AAFA (and many AAFA member companies) participate in a number of advisory groups that work with CBP and other Administration agencies, neither we nor our members learned of the proposed reinterpretation until the filing of the FR with the Government Printing Office (GPO) on January 23. Similarly, the Commercial Operations Advisory Committee (COAC) – the principal industry advisory body for CBP – has complained that it was not consulted in the development of this proposal.[7] Moreover, we have learned that CBP did not discuss this proposal with key Congressional Committees or other agencies in the Administration. Had CBP first consulted with these groups, it might have learned of the very strong opposition to its proposal and the very strong support for maintaining the FS doctrine.

In addition, U.S. companies were not afforded any ability to help shape U.S. positions vis-à-vis U.S. interaction with the secretive WCO discussions on this issue. Indeed, because the FS doctrine has been the law of the land for 20 years, the trade community, had it even known that a discussion of the FS doctrine was on the agenda at the WCO, would have naturally assumed that U.S. positions at the WCO would have led to support for, and a vigorous defense of, the FS doctrine and the U.S. application of that doctrine. We believe the apparent failure of CBP to defend U.S. law and positions at the WCO to be a fatal flaw.

Failure to consult on this issue has created significant problems. Our government only functions well when trade policy is developed in a fully transparent manner. This is important to ensure the development of policies that work effectively and enjoy widespread support. It also proves to U.S. trading partners an important signal on the way they should develop trade policies and programs. Even though the CBP is now soliciting public comments, many of the elements of a rule making such as economic analysis, advanced notice, and strict timelines for action are absent.

The relative lack of transparency in this episode sends a very bad message to the trade community in the United States that undermines U.S. security initiatives. Since 9/11, the trade community and CBP have been working jointly to build and grow a Customs Trade Partnership Against Terrorism (C-TPAT). For the C-TPAT to function well, there needs to be a true and working partnership between the trade community and CBP. Yet that partnership cannot function properly, and perhaps not at all, if CBP fails to communicate, as it did in this case, to recognize the importance of programs like the FS doctrine to the business community. As our members are working to build a stronger partnership with CBP, their efforts to build support within their companies for that partnership is greatly eroded when CBP fails to consult in this manner.

The failure to consult also sends the wrong message to U.S. trading partners, and stands in sharp contrast with the messages of transparency and predictability that our trade negotiators are working so hard to communicate to foreign governments. U.S. trade objectives emphasize the importance of full consultation and predictability. But how can the U.S. promote this ideal when it fails to fully abide by those principles – especially on an issue as important as the FS doctrine – itself? The fact that the U.S. has such a well-

[7] See comments by Bruce Leeds, Chair, COAC (Submitted 2/25/08). See also transcript of February 13, 2008 COAC meeting, as submitted by CBP Commissioner Ralph Basham (Submitted 3/24/2008)

developed advisory system, and that this system was blatantly ignored in this case, makes the oversight even more egregious.

Finally, the lack of consultation opens U.S. companies up to additional unanticipated costs. It is clear from the FR notice that CBP has contemplated this change of position since at least April 2007 (and possibly earlier), when the WCO issued its non-binding commentary on valuation. Had CBP advised the trade community that it was contemplating a change, companies would have been able to provide information to CBP on the importance of this issue to their operations. Moreover, companies that were in the process of reconfiguring their operations and software might have refrained from incurring those costs while they waited to make ensure the FS doctrine would remain in place. Instead, many companies incurred significant legal and regulatory costs over the past year, oblivious to the fact that CBP was simultaneously working to undo this program. That CBP would operate in this manner is very troubling.

3. CBP has no compelling reason to seek a change at this time.

As noted above, the FS doctrine is grounded in 20 years of legal precedent. Moreover, CBP and the Department of Treasury have issued numerous rulings, regulations, and implementing documents providing guidance for companies wishing to avail themselves of FS appraisement. The trade community is quite naturally surprised to learn that CBP has suddenly decided to seek a change in this important program.

In its FR notice, CBP has pointed to the WCO non-binding commentary as a reason for the timing of the change. In addition to the fact that the WCO is not binding on the United States, we would also note that a WCO revenue decision is not appropriate policy for the United States. The WCO is dominated by countries in the developing world that derive a significant percentage of their revenues from import duties. It is only natural that the WCO would support policies that would maximize revenue from import duties. In contrast, the United States, and many other developed countries in Europe that still maintain the FS doctrine, rely upon income taxes and other sources of revenue. Indeed, less than 1 percent of the U.S. federal budget is supported by revenues from U.S. import duties. Thus, while certain WCO members may be in favor of migrating to a last sale doctrine, such a goal is not in the U.S. interest.

CBP has also claimed that the FS doctrine is difficult to administer because it relies, in part, on documents generated in foreign countries. This claim confounds many in the trade community. CBP has ample experience administering this program and has, in fact, acknowledged in meetings at the WCO[8] that it has the means and resources to administer

[8] See written statements submitted by CBP officials at the World Customs Organization - Technical Committee on Valuation, *Report to The Customs Co-Operation Council on the 19th Session of the Technical Committee on Customs Valuation*, VT0420E3, Paragraph 137. "Responding to a delegation which asked how, in the [First Sale] example submitted by [the U.S.] Administration, the importer would be able to provide details of the sale preceding the one which had led to the importation of the goods, the Delegate of the United States said that these transactions generally took place between related parties, and therefore **it would not be very difficult for the importer to provide the information required by Customs**. In any event, in her Administration's experience, even where the importer was not related to the seller **he/she often was able to provide the information required by Customs**." (emphasis added). World

this program successfully. Moreover, CBP administers numerous other programs that rely upon foreign documentation. Finally, any so-called administrative difficulty is properly addressed by ensuring that CBP has adequate resources necessary to administer and enforce this program, rather than proposing a change to eviscerate the doctrine in its entirety.

Further, CBP argues that the FS doctrine may not fully capture all the elements of valuation – such as assists – in a first sale transaction. In fact, the courts and CBP itself have detailed implementation guidance and procedures that establish criteria to ensure that, in order for a transaction to qualify for first sale consideration (i.e., be a viable transaction), it include all elements necessary to properly appraise the transaction. Importers have the burden to make sure that all the elements of valuation exist in order to properly appraise the transaction value. If all elements of value are not included, the transaction will not be deemed viable and the FS appraisement will be denied.

4. CBP's Proposal in wrong in that it raises costs of imported goods.

The practical effect of the CBP proposal, should it be allowed to take effect, would be to increase the costs of a variety of imported goods, including those currently imposed on textiles, apparel, and footwear.

The extra cost would manifest itself the following way:

In cases where there are multiple sales for a single import transaction, companies use the FS doctrine to calculate duties using the value of the First Sale in the transaction rather than the value of the Last Sale. For example, suppose a company makes trousers in Cambodia and exports them for $10 per pair to a middleman. Suppose that middleman, in turn, sells the trousers for $12 per pair to the apparel company in the United States. Provided that each sale in this transaction meets the thresholds created by the courts, and complies with the documentation and valuation methods established by CBP, the company has a choice of paying an *ad valorem* duty (i.e., 17 percent) based on the value in either the First or the Last Sale. Because, in the above example, 17 percent of $10 ($1.70) represents a lower cost than 17 percent of $12 ($2.04), companies will choose to use the First Sale to calculate the duty (again provided they are able to comply with applicable rules). When one multiplies this duty savings ($0.34) across the number of trousers in that order, and factor in similar savings on other products, the FS doctrine represents significant savings.

In some cases, the loss of these FS savings would represent an additional expense that would be borne by the importer or the company responsible for the imported product. To absorb that cost, these companies would have to reduce other overhead expenses, such as salaries and personnel in the United States. Thus, for these companies, the full application of the CBP proposal will result in U.S. job losses.

Customs Organization - Technical Committee on Valuation, *Report to The Customs Co-Operation Council on the 19th Session of the Technical Committee on Customs Valuation*, VT0420E3, Paragraph 137.

In other cases companies can pass along the lost FS savings (i.e., the costs) to their customers. In those cases, the CBP proposal will result in U.S. consumers paying higher prices on basic needs, such as apparel and footwear.

While we oppose measures that increase costs and raise prices, we strongly oppose such policies that will have these effects during a recession. We find it incredible that CBP would propose, and the Administration would support, a measure that essentially imposes a new tax on business and consumers at the same time the government is promoting economic stimulus measures. The beneficial impact of those recently enacted economic stimulus measures are undermined through the application of the CBP proposal.

Similarly, the CBP proposal to eliminate FS stands in contrasts to U.S. efforts to achieve a new deal to reduce multilateral tariff and non-tariff barriers through the Doha Round. The United States has long prided itself on maintaining an open and trade-friendly economy, which provides benefits for both businesses and consumers. A successful multilateral trade round will enhance and extend those benefits. If CBP is allowed to implement its proposal, the U.S. will be taking a step backward, as well as a step away from its own multilateral trade goals, by allowing the applied amount of current U.S. import duties to increase.

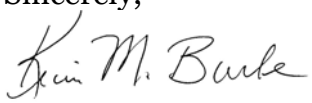
Conclusion

The business community needs clear, transparent, and predictable rules in order function efficiently. Moreover, the business community needs to know that CBP is a full partner in ensuring a stable regulatory environment and in promoting full compliance with all applicable trade laws.

CBP's sudden decision to overturn the FS doctrine is wrong on legal, process and policy grounds. CBP does not have the authority to pursue this change in this manner. Not only is there no compelling reason to seek this change, but any such change would have significant adverse impacts on US business and consumers. It would significantly undermine the partnership that CBP has developed with the trade community as well as create disturbing precedents that would erode the rule of law.

We respectfully urge that CBP immediately withdraw this proposal and confirm that the FS doctrine remains intact.

Sincerely,



Kevin M. Burke
President and CEO

Congress of the United States
Washington, DC 20515

April 18, 2008

The Honorable Michael Chertoff
Secretary of Homeland Security
Department of Homeland Security
Washington, DC 20528

Dear Secretary Chertoff:

It has come to our attention that U.S. Customs and Border Protection ("CBP") is considering reversing its long-standing policy of allowing importers to use the First Sale Rule to value goods for import purposes. We urge that this proposal be immediately withdrawn.

CBP's proposal would violate a long-standing judicial and administrative interpretation of a U.S. statute in favor of a 2007 non-binding World Customs Organization commentary. We hope you concur that U.S. law trumps a non-binding opinion of an international organization, notwithstanding our obligations to comply with international agreements. Moreover, changing U.S. law to comply with an international agreement (let alone a non-binding commentary on such an agreement) can only be achieved by the U.S. Congress and not through an Administrative rule-making process.

Since the First Sale Rule was established as a viable appraisement method in 1988, it has been an effective tool helping U.S. importers and exporters compete in the global marketplace, enabling them to offer savings opportunities to their customers. The rule has resulted in millions of dollars in savings on virtually every type of product purchased from overseas, lowering costs for American consumers and boosting the bottom line of job-creating companies.

If CBP's proposal were to take effect, many U.S. companies would be forced not only to pay increased import duties, fees, and taxes but also to restructure and possibly eliminate business units that have been built around this long-standing law. For some of our constituents, the extra costs could reach into the millions of dollars, which, ultimately, may be passed on to consumers.

Moreover, the First Sale Rule, which is based on a U.S. statute, has been upheld by the courts and consistently applied by CBP. CBP's proposal to revoke administratively appears to undermine our separation of powers and further creates an air of uncertainty for importers and businesses engaged in import activities. Again, only Congress can change the law. It is an abuse of discretion and contrary to law for an Executive Branch agency to use the administrative rulemaking process to abrogate the judicial interpretation of a U.S. statute.

In addition, we believe that CBP, in consultation with other federal agencies, should consider the potential negative impact on U.S. exporters. For example, other countries that allow the First Sale Rule could decide to alter their rules if CBP's proposal were adopted. This would likely lead to decreased exports for some U.S. exporters as they would face increased duties and other taxes based on customs values.

Lastly, in recent weeks, Congress and the Administration have worked together to implement an economic stimulus package to promote economic spending. CBP's proposal, if adopted, could impede these efforts by creating a hidden tax on the U.S. consumer, hitting our businesses and families with an increase in the costs of goods they buy at a time when the domestic economy is already struggling.

Secretary Chertoff, we respectfully submit that CBP's proposal to revoke administratively the First Sale Rule is the wrong approach. We are prepared to discuss any of your concerns regarding our customs valuation methodology, so that we may take into account the broader policy and economic implications involved. In the meantime, we ask that you withdraw the proposed interpretation for the reasons outlined in this letter. Thank you.

Sincerely,

Kendrick B. Meek
Member of Congress

Bennie G. Thompson
Member of Congress

David E. Price
Member of Congress

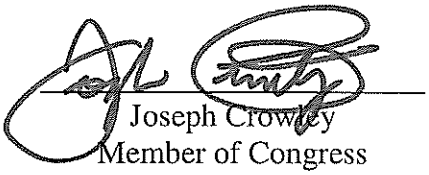
John Conyers, Jr.
Member of Congress

Henry Cuellar
Member of Congress

Jim Ramstad
Member of Congress

David Dreier
Member of Congress

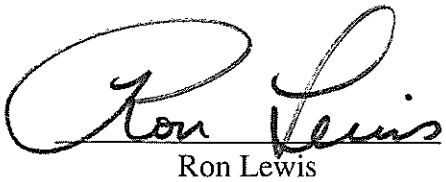
Paul Ryan
Member of Congress



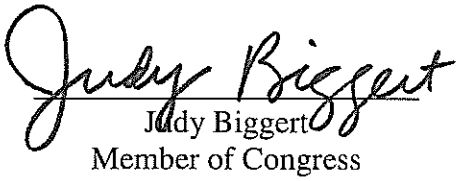
Joseph Crowley
Member of Congress

Artur Davis
Member of Congress

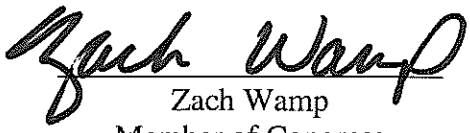
Earl Blumenauer
Member of Congress



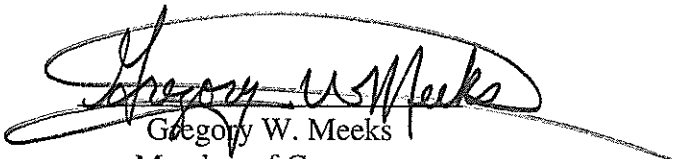
Ron Lewis
Member of Congress



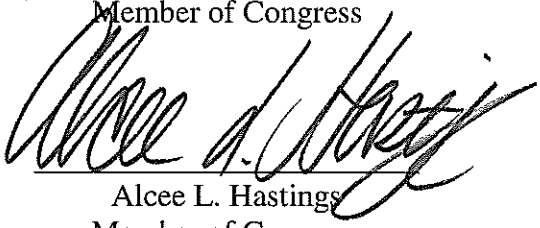
Judy Biggert
Member of Congress



Zach Wamp
Member of Congress

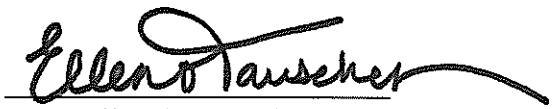


Gregory W. Meeks
Member of Congress



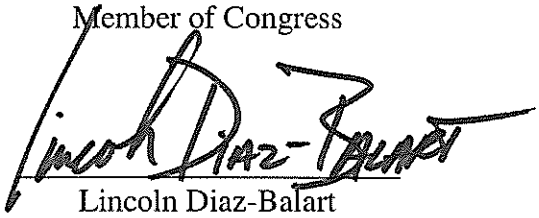
Alcee L. Hastings
Member of Congress

Ron Klein
Member of Congress

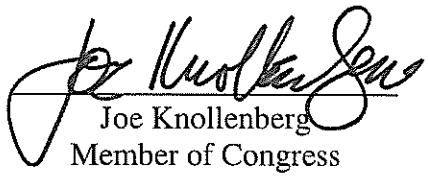


Ellen O. Tauscher
Member of Congress

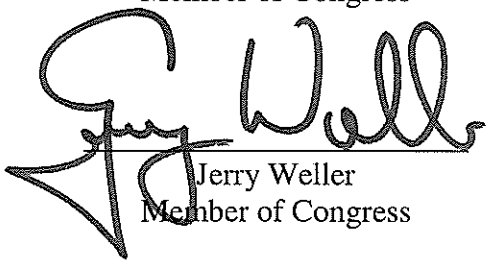
Howard Coble
Member of Congress



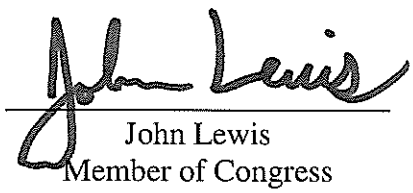
Lincoln Diaz-Balart
Member of Congress



Joe Knollenberg
Member of Congress



Jerry Weller
Member of Congress



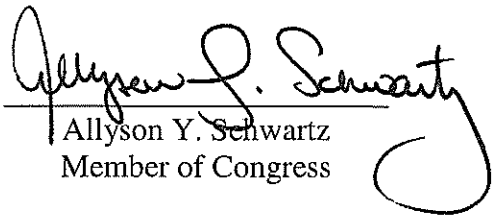
John Lewis
Member of Congress

Debbie Wasserman Schultz
Member of Congress

Keith Ellison
Member of Congress

Jim Matheson
Member of Congress

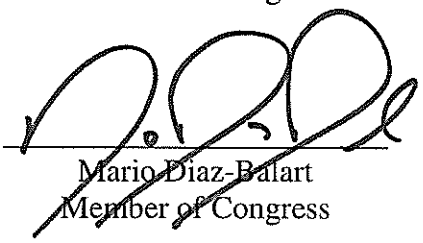
Virginia Foxx
Member of Congress



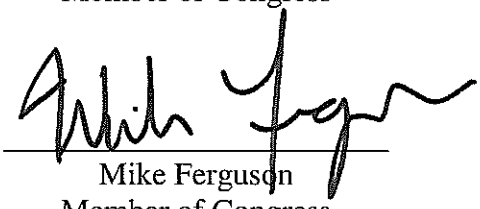
Allyson Y. Schwartz
Member of Congress

Connie Mack
Member of Congress

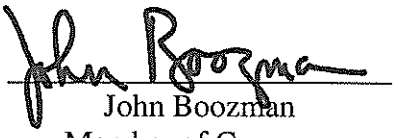
Pete Sessions
Member of Congress



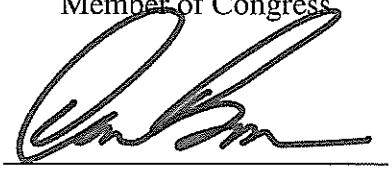
Mario Diaz-Balart
Member of Congress



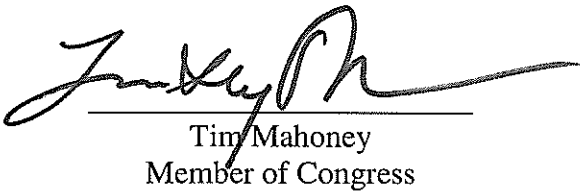
Mike Ferguson
Member of Congress



John Boozman
Member of Congress



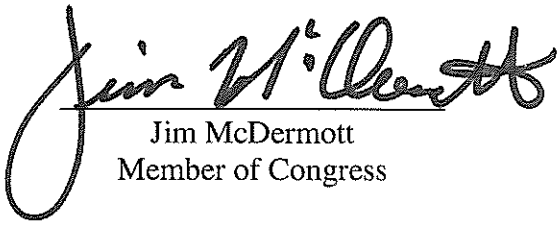
Dan Boren
Member of Congress



Tim Mahoney
Member of Congress

Edward R. Royce
Member of Congress

Kathy Castor
Member of Congress

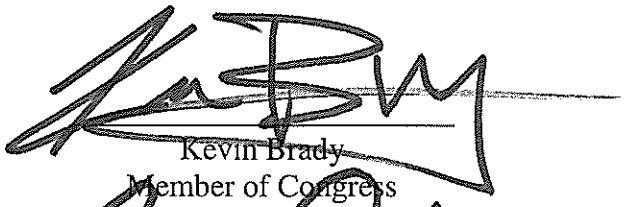


Jim McDermott
Member of Congress

Ileana Ros-Lehtinen
Member of Congress

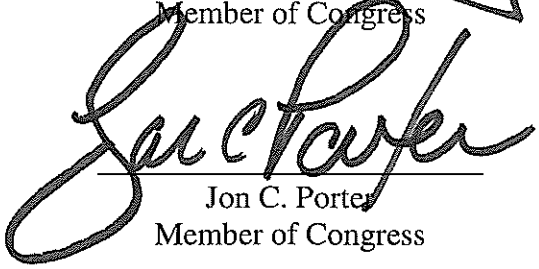
Mike Thompson
Member of Congress

Carolyn Maloney
Member of Congress



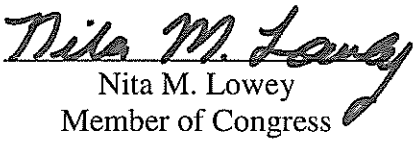
Kevin Brady
Member of Congress

Bill Pascrell, Jr.
Member of Congress



Jon C. Porter
Member of Congress

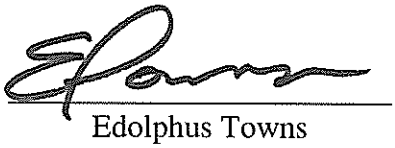
Tom Price
Member of Congress



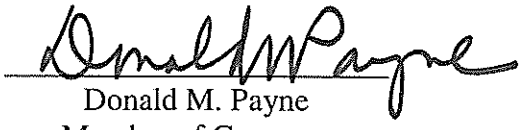
Nita M. Lowey
Member of Congress

Roy Blunt
Member of Congress

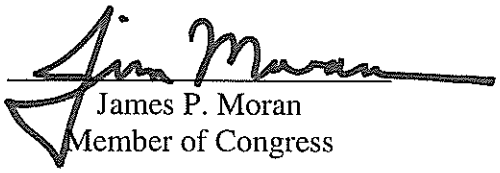
Sue Wilkins Myrick
Member of Congress



Edolphus Towns
Member of Congress



Donald M. Payne
Member of Congress



James P. Moran
Member of Congress

United States Senate

WASHINGTON, DC 20510

April 17, 2008

The Honorable Michael Chertoff
Secretary
Department of Homeland Security
Nebraska Avenue Center, NW
Washington, DC 20528

Dear Secretary Chertoff:

We are writing to express our serious concerns regarding a recent decision by U.S. Customs and Border Protection (CBP) to unilaterally and arbitrarily reverse a well-settled practice of customs valuation based on the "first sale rule." If this rule is reversed, it would undermine nearly 20 years of U.S. Federal Court jurisprudence, raise U.S. consumer prices and have a significantly negative impact on U.S. companies who have relied on this practice and who now may be forced to restructure and possibly eliminate business units that have been built around this practice of valuation.

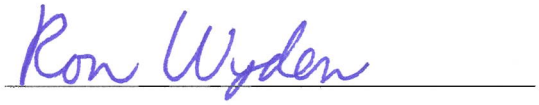
On January 24, 2008, with no advance notice or consultation with the Congress or the trade community, CBP issued a notice in the *Federal Register* reinterpreting this long standing and relied upon rule and proposed instead a new valuation system that will result in imposition of higher import duties, fees and taxes.

At a time when we are looking for ways to provide stimulus to our economy, we are concerned that the proposed action could undermine essential elements of that goal by potentially raising consumer prices.

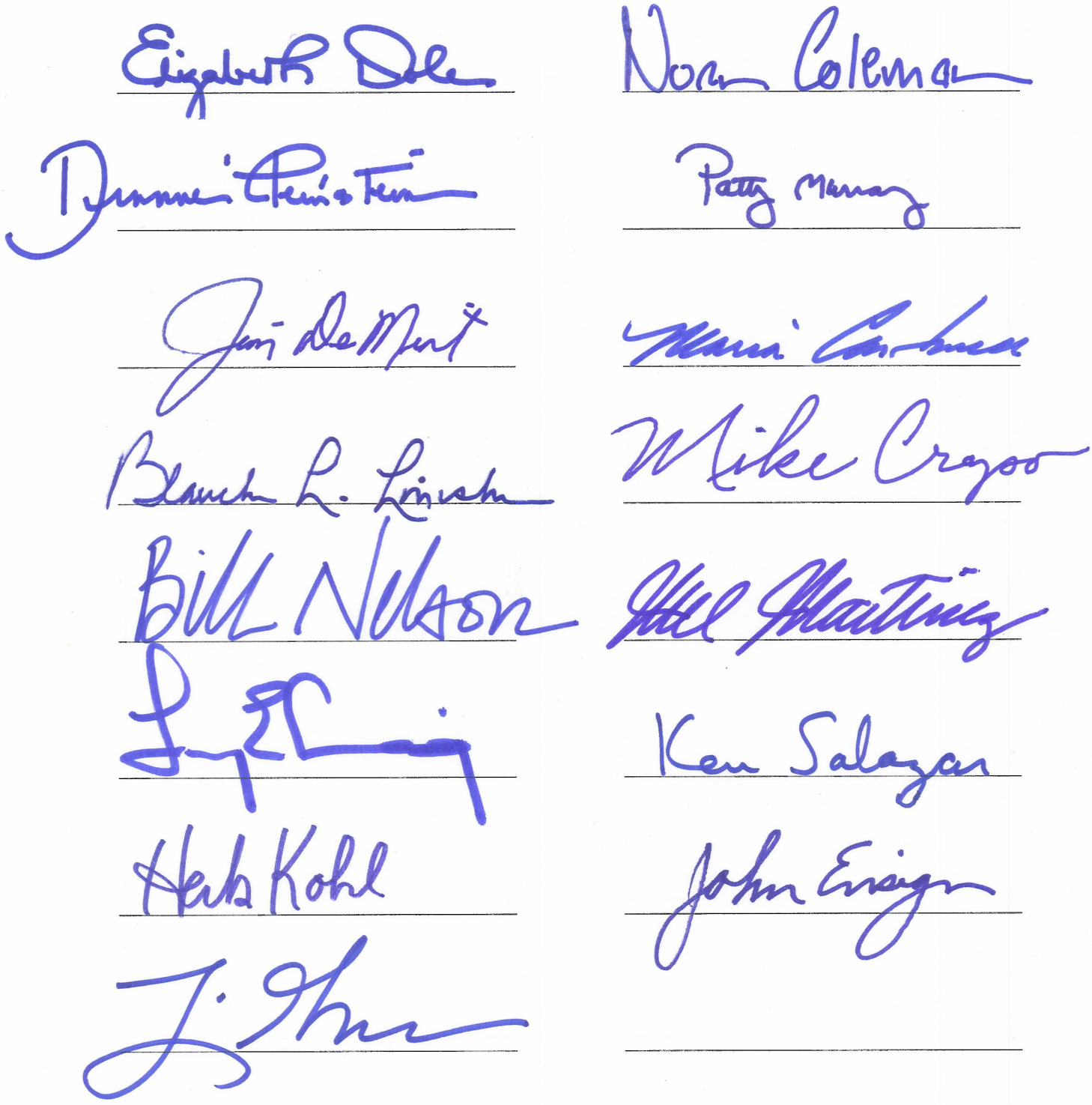
Secretary Chertoff, we believe this proposed change is procedurally and substantively wrong and we respectfully request that CBP immediately withdraw from consideration this damaging proposal and seek further consultation with the Congress and the trade community before any further action is taken.

We thank you for your consideration of our views on this critically important issue.

Sincerely,



Letter to Secretary Chertoff
April 17, 2008



cc: The Honorable W. Ralph Basham, Commissioner
U.S. Customs and Border Protection

CHARLES E. SCHUMER
NEW YORK

COMMITTEES:
JOINT ECONOMIC
BANKING
JUDICIARY
RULES
FINANCE

United States Senate

WASHINGTON, DC 20510

April 23, 2008

The Honorable Michael Chertoff
U.S. Department of Homeland Security
Washington, DC 20528

The Honorable Henry M. Paulson, Jr.
Department of the Treasury
Washington, DC 20220

Dear Secretary Chertoff and Secretary Paulson:

I am writing to express my concerns regarding the January 24, 2008, proposal by U.S. Customs and Border Protection (CBP) that would alter the way in which the transaction value of imported articles is calculated and eliminate the so-called "first sale" rule. As I understand it, if CBP's proposal were to take effect, many U.S. companies would be forced not only to pay increased import duties, fees and taxes, but also to restructure and possibly eliminate business units that have been built around this long-standing precedent. For some of my constituents, the extra costs could reach into the millions of dollars which, ultimately, will be passed on to consumers and cause more U.S. jobs to be pushed offshore.

New York's apparel industry would be particularly hard hit. The industry injects billions of dollars into the New York economy and employs tens of thousands of New Yorkers in apparel design, production, distribution, sales and marketing operations. Fashion industry leaders such as Jones Apparel, Phillips-Van Heusen, and Carole Hochman Design Group are headquartered in New York. Clothing retailers, such as Macy's, JCPenney and David's Bridal, employ an additional 127,000 people throughout the state. The continued health of these and other companies in the apparel industry, including Perry Ellis, Hanesbrands, Biflex, VF Corporation, Ariela-Alpha, TellaS Ltd., and Smart Apparel, is critical to the New York economy. Overturning the first sale rule would come at a significant cost to these companies and, by extension, at a significant cost to New York consumers and the New York economy.

For approximately 20 years, the courts and CBP have recognized the first sale rule as a viable appraisement tool. CBP has failed to articulate any overriding need to revisit this issue or the legal basis for doing so. The claim that CBP has had "difficulty" administering the rule simply does not ring true with my constituents. The rule has been successfully administered for two decades and CBP has issued dozens of ruling letters and provided guidance regarding compliance. Many New York companies have built business plans and vendor relationships around the first sale rule. This makes CBP's failure to assess the economic impact of the possible effects of its proposed rule change all the more egregious.

I question the Administration's judgment in imposing what essentially amounts to a tax increase on consumers and businesses at a time when we are seeking to stimulate the economy to avoid an extended or deep recession. Since the first sale rule was established as a viable appraisement method in 1988, it has helped U.S. companies compete in the global marketplace, enabling them

to offer savings opportunities to their customers. The rule has resulted in millions of dollars in savings on virtually every type of product purchased from overseas, lowering costs for American consumers and boosting the bottom line of job-creating companies.

New York consumers, workers and businesses would be hit hard by this change. CBP has offered no viable justification for such a significant tax increase on families and businesses and I request that you withdraw this ill-advised proposal immediately. I understand that a number of other Senators have written to you on this issue, but I chose to write to you separately to underscore how important this issue is to the New York economy.

Sincerely,

Charles E. Schumer
United States Senator

cc: W. Ralph Basham
Commissioner, U.S. Customs and Border Protection